IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8464 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIBEN @ LIMBUWALI WD/O GANGARAM TUKARAM PAWAR

Versus

COMMISSIONER OF POLICE

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 03/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this Writ petition under Art.226 of the Constitution of India, challenged the legality and validity of the order of detention dt. 10/4/2000 (Annexure : A) passed by Respondent No.1 in exercise of powers conferred upon him under Sec.3(2) of the Gujarat Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that the petitioner

detenu is a "bootlegger" within the meaning of Sec.2(b) of the Act and that her activities are prejudicial to the maintenance of public order. Before passing the order of detention, for arriving at his subjective satisfaction, the detaining authority has placed reliance on five cases for the offence punishable under the provisions of Bombay Prohibition Act, 1949 lodged against the petitioner detenu which are referred to in the grounds of detention. And all the five cases are pending before the Court awaiting trial. The detaining authority has, before passing an order of detention on 10/4/2000, placed reliance on statements of two un-named witnesses. That statements of two un-named witnesses were verified by the detaining authority on 30/3/2000 and the order of detention has been passed on 10/4/2000 which is challenged in this Writ Petition.

3. Though Rule has been served upon each respondent, the respondents have not filed affidavit-in-reply in reply to the Writ Petition controverting the grounds mentioned in Memo thereof.

4. Ms.Subhadraben Patel, the learned advocate for the petitioner has argued that looking to the grounds of detention, while passing order of detention, the detaining authority has stated in the grounds of detention that he has taken into consideration the provisions of Sec.57 of the Bombay Police Act which he could not have taken into consideration as the petitioner has not been convicted atleast in three cases. He has further argued that the detaining authority has taken into consideration less drastic remedy which is not available to him for passing an order of detention, and therefore, this is a case of total non-application of mind of the detaining authority.

5. Ms.Subhadraben Patel has cited an authority in case of JAYANTI NENUMEL RAMNANI VS. COMMISSIONER OF POLICE, RAJKOT AND OTHERS, reported in 2000(2) G.L.H. 166, wherein it has been held that the question does not arise for considering less drastic remedy, when it was not available to the detaining authority. The detaining authority has taken into consideration the provisions of Sec. 57 of the Bombay Police Act, which he could not have taken into consideration as the petitioner has not been convicted in atleast two cases. This fact itself shows non-application of mind on the part of the detaining authority. The facts of the present case squarely fall within the four corners of the case cited by Ms.Subhardraben Patel.

5. In view of what is stated hereinabove, this Writ Petition is allowed. The order of detention dt. 10/4/2000 Annexure : A passed by Respondent No. 1 is quashed and set aside. The petitioner detenu is ordered to be released forth with, if she is not required to be detained further for criminal case or proceeding. Rule is made absolute accordingly. Direct Service is permitted.

Date: 3/10/2000. (H.H.MEHTA,J.)
ccshah